council issued improvement bonds amounting to $99,000. Action brought to restrain council from further issue of bonds to the amount of $60,000 with approval of voters. *Held,* that statute and charter allows council to issue bonds to any amount, less than $100,000 for any particular purpose, although the aggregate issue of city bonds exceeds $100,000. Collins and Brown, J. J., dissenting.

The court in construing this statute draws a very close distinction, which appears to be contrary to the wording of the statute as set forth by the opinion of the dissenting judges, but it is in line with the decision of the U. S. court. *Chicot Co. v. Lewis,* 103 U. S. 495.

NUISANCE—CONTRACTORS—PUBLIC WORK—DAMAGES.—BATES V. HOLBROOK ET AL., 73 N. Y. Supp. 417.—Defendants, being engaged on public work, placed their machinery, without objection from the city authorities, on a park opposite plaintiff's hotel, thereby greatly damaging him. *Held,* that contractors on public work should not unnecessarily create a nuisance to neighboring property holders. Patterson, J., dissenting.

Official sanction of a nuisance must be express to justify an injury to private property and special damage caused is actionable. *Cogswell v. R. R.,* 103, N. Y. 10; *R. R. v. Church,* 108 U. S. 317. *Contra,* a properly authorized act, done carefully, does not render the doer liable for the consequences. *Exr's v. Mayor,* 4 N. Y. 195. And damage resulting from a permanent nuisance, operating under proper authority, may be recovered. *Morton v. Mayor,* 65 Hun. 32.

RAILROADS IN STREET—CHANGE OF GRADE—LIABILITY TO ABUTTERS.—FRIES V. N. Y. & H. R. Co., 68 N. Y. Supp. 670.—Railroad Company was compelled by law to erect and run cars over steel superstructure. *Held,* company was not liable to abutting owners for injury to easements of light, etc., in absence of wording in statute to that effect. Bartlett, Vann and Cullen, J. J., dissenting.

In ruling contrary to the recent case of *Lewis v. N. Y. & H. R. Co.* 162 N. Y. 202, the court seems to have gone against the weight of authority as also the case of *Story v. Railroad Co.* 90 N. Y. 122, and *Lehr v. Met. El. R. Co.* 104 N. Y. 291. An abutting owner necessarily enjoys certain advantages from the existence of an open street adjoining his property, and if they can be taken away and directed to inconsistent uses by legislative authority, it seems as though it inaugurates a system more nearly resembling legalized robbery than any other form of acquiring property. *Barnett v. Johnson,* 15 N. J. Eq. 481; *Codman v. Evans,* 5 Allen, Mass., 311.

REPLEVIN—AFFIDAVIT—APPEAL.—GERMAN NAT. BANK V. AULTMAN, MILLER & Co., 88 N. W. 479 (Neb.).—In appeal of replevin suit to District Court, plaintiff had filed a second affidavit enlarging on the first. Court, regarding this as superfluous, and different from that filed first, struck it out. Plaintiff withdrew suit; but later, moved for a new trial. Overruled, he asked for review on error. *Held,* that order of district court striking out said affidavit was erroneous. Sullivan, J., dissenting.

The dissenting view is of some moment. At most, the District Court's ruling was a harmless error, as said affidavit should have been regarded as an amendment. *Bank v. Ketcham,* 46 Neb. 568. After pleadings had been filed in District Court, it was too late for defendant to take advantage of any defects. 18 *Enc. Pl. and Prac.* 517; *McKee v. Metraw,* 31 Minn. 429. But plaintiff voluntarily refused to proceed. Hence, it seems lacking in propriety to send him back to District Court to fortify a probably impregnable position.